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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,371	02/12/2001	Lisa A. Cornish	CRN01-UTL	9743

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EXAMINER

COMSTOCK, DAVID C

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 12/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/782,371

Applicant(s)

CORNISH, LISA A.

Examiner

David C. Comstock

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 17 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9-11, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (3,304,945).

Anderson discloses a hair treatment cap 11 comprising a plurality of long narrow slits 15 cut into the cap in two or more orientations. The cap is formed of plastic. The slits are 1/2 to 2/12 inches in length. The slits are reinforced by thicker plastic 33, 33' around the slits. (See Figs. 1 and 7; col. 2, lines 44-49; and col. 4, lines 39-42.)

Anderson discloses the claimed invention except for slits having a width in the range of 1/64" to 1/4". It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the slits with a width in the range of 1/64" to 1/4", since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. With regard to claims 5 and 10, it would have been an obvious matter of design choice to form the slits in a zig-zag shape since applicant has not disclosed that the zig-zag shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well without the slits

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having a zig-zag shape. Moreover, the zig-zag shape does not appear to be anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious. *In re Dailey and Eilers*, 149 USPQ 47 (1966). With regard to claims 6 and 9, it would have also been obvious to one having ordinary skill in the art at the time the invention was made to space the slits apart with a spacing in the range of 1/2" to 2", since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (3,304,945).

Anderson discloses a method of treating hair comprising placing a plastic cap having long, narrow slits therein over the hair of a person, pulling shanks of hair through the slits, treating the hair by frosting, and repeating until done. The slits are 1/2" to 2 1/2" in length. The slits are reinforced by thicker plastic 33, 33' around the slits. (See Figs. 1 and 7; col. 2, lines 60-64; and col. 4, lines 39-42 and 57-73.) Anderson does not disclose the slits having a width in the range of 1/64" to 1/4" or the slits being spaced apart with spacing in the range of 1/2" to 2". It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the slits with a width in the range of 1/64" to 1/4" and to space the slits apart with a spacing in the range of 1/2" to 2", since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. With regard to claim 14, it would

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have been further obvious to one having ordinary skill in the art at the time the invention was made to form the slits with a zig-zag shape since applicant has not disclosed that the zig-zag shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well without the slits having a zig-zag shape. Moreover, the zig-zag shape does not appear to be anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious. *In re Dailey and Eilers*, 149 USPQ 47 (1966).

Claims 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (3,304,945) in view of Sanzo (3,103,933).

Anderson, as modified, discloses the claimed invention except for the slits having a ZIP LOCK closure. Sanzo discloses a similar device having a linear, interference-fit closure, 20, 21, i.e., ZIP LOCK, to provide a barrier to retain hair treatment fluid and facilitate the hair treatment process. (See Figs. 1 and 2; col. 1, lines 68-72; col. 2, lines 28-33; and col. 3, lines 33-37.) It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hair treatment cap of Anderson, as modified, with slits having a ZIP LOCK closure in view of Sanzo in order to provide a barrier to retain hair treatment fluid and facilitate the hair treatment process.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (3,304,945) in view of Sanzo (3,103,933).

Anderson, as modified, discloses the claimed device and method of claim 16 except for the slits having a ZIP LOCK closure. Sanzo discloses a similar device having a linear, interference-fit closure, 20, 21, i.e., ZIP LOCK, to provide a barrier to retain hair

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treatment fluid and facilitate the hair treatment process. (See Figs. 1 and 2; col. 1, lines 68-72; col. 2, lines 28-33; and col. 3, lines 33-37.) It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hair treatment cap and method of Anderson with slits having a ZIP LOCK closure in view of Sanzo in order to provide a barrier to retain hair treatment fluid and facilitate the hair treatment process.

### ***Response to Arguments***

Applicant's arguments filed 17 October 2002 have been fully considered but they are not persuasive.

In response to Applicant's argument that Anderson does not anticipate claims 1, 2, 3, and 7, which now limit the width of the slits to 1/64 inch to 1/4 inch, it is noted that these claims, which were originally rejected as being anticipated by Anderson, are now rejected as being rendered obvious in view of Anderson.

In response to Applicant's argument that Anderson does not render Applicant's invention obvious, it is noted that Anderson discloses a cap having long narrow slits. Integrally attaching clamps to the edges of the slits does not change this fact. The presence of clamping means on the edges of the slits does not preclude or teach against a slit width of 1/64 inch to 1/4 inch. In order for the slit to accommodate any hair at all it must have some width. Furthermore, Anderson discloses that the clamps "*clamp the lock of hair* in fluid-tight engagement" to protect the scalp (emphasis added). Thus, the slits are at least wide enough to accommodate a lock of hair (see Figure 1).

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This width necessarily is in the range of 1/64 inch to 1/4 inch (1/64 inch is only about the width of four average human hairs). Even if, *arguendo*, Anderson did not inherently disclose slits in this range, it still would have been obvious to one having ordinary skill in the art at the time the invention was made to form the slits with a width in the range of 1/64" to 1/4" since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. In addition, as a person of ordinary skill in the art could easily form the clamps in any number of shapes, Anderson does not teach against a zig-zag shape and does not preclude the obviousness rejection set forth.

In response to Applicant's argument that Sanzo does not render Applicant's invention obvious, it is noted that Sanzo is similar to both Applicant's invention and to Anderson. Sanzo, Applicant, and Anderson all disclose a device used to isolate sections of hair and apply a hair treatment thereto. Sanzo further teaches using a linear interference-fit closure to provide a barrier to retain hair treatment fluid. Likewise, Anderson aims to form a barrier to prevent hair treatment fluid from contacting the scalp. Thus, the obviousness rejection set forth does not lack adequate motivation. The test for combining references is what the references as a whole would have suggested to one of ordinary skill in the art. *In re Sheckler*, 168 USPQ 716 (CCPA 1971); *In re McLaughlin*, 170 USPQ 209 (CCPA 1971); *In re Young*, 159 USPQ 725 (CCPA 1968).

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**Conclusion**

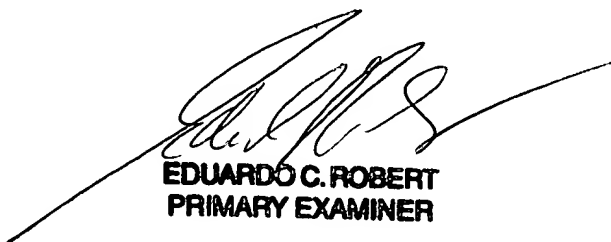
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Applicant added a limitation to claim 1 regarding the width of the slits thereby necessitating a new rejection of the corresponding claims under 35 USC 103. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Comstock whose telephone number is (703) 308-8514.

OC

D.C. Comstock  
December 20, 2002

  
**EDUARDO C. ROBERT**  
**PRIMARY EXAMINER**